

1 STATES UNITED DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x
4 FERNANDO HERNANDEZ, KENNETH CHOW,
5 BRYANT WHITE, DAVID WILLIAMS, MARQUIS ACKLIN,
6 CECILIA JACKSON, TERESA JACKSON,
7 MICHAEL LATTIMORE, and JUANY GUZMAN, Each
8 Individually, And On Behalf Of All Other
9 Persons Similarly Situated,

Plaintiffs,

-against-

Index No:
12 CV 4339 (ALC) (JLC)

10 THE FRESH DIET, INC., LATE NIGHT EXPRESS
11 COURIER SERVICES, INC. (FL), FRESH DIET EXPRESS
12 CORP. (NY), THE FRESH DIET - NY INC. (NY),
13 FRESH DIET GRAB & GO, INC. (FL) a/k/a
14 YS CATERING HOLDINGS, INC. (FL) d/b/a
15 YS CATERING, INC. (FL), FRESH DIET EXPRESS
16 CORP. (FL), SYED HUSSAIN, Individually,
17 JUDAH SCHLOSS, Individually, and ZAIMI DUCHMAN,
18 Individually,

Defendants.

19 -----x
20
21 EXAMINATION BEFORE TRIAL of
22 the Plaintiff, JUANY GUZMAN, taken by the
23 Defendant, pursuant to Notice, held at the
24 offices of Kaufman, Dolowich, Voluck & Gonzo
25 LLP, 100 William Street, Suite 215, New York,
New York 10038, on October 7, 2013, at 10:07
a.m., before a Notary Public of the State of
New York.

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A P P E A R A N C E S:

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FILE #: 055611-0002

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S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties herein, that filing, sealing and certification, and the same are, hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all objections except as to the form of the question, shall be reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be signed and sworn to by an officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the Court.

1 J. Guzman

2 of the client that were there for Monday would
3 be the same one for Tuesday, would be the same
4 one for Wednesday. The client would order the
5 food every single -- they would be on the
6 program for every single day.

7 Q. There were some that had daily
8 deliveries?

9 A. Yes, most of them.

10 Q. Did you use your own car to perform the
11 deliveries?

12 A. Yes.

13 Q. What car was that?

14 A. When I started, it was a -- a 1990 -- I
15 believe it was 1999 BMW 528, and towards the
16 end of my time there, it was a 2002 Audi A4.

17 Q. Were these cars owned by you?

18 A. Yes.

19 Q. Why did you switch cars?

20 A. The -- the BMW was not holding up for
21 the route. It needed a lot of repairs and
22 stuff like that, so I ended up just getting
23 another car.

24 Q. Did you have insurance for the cars?

25 A. At that time, I had insurance for the

1 J. Guzman

2 BMW. Actually, right now, I have insurance for
3 the Audi.

4 Q. Did you pay for the insurance?

5 A. Yes.

6 Q. Do you know who the insurance was
7 through?

8 A. I -- it was -- now, it's -- I have IFA.
9 At that time, it was -- I believe it was
10 Prudential.

11 Q. What do you have now?

12 A. I have IFA. It's a company from New
13 Jersey.

14 MR. ANDREWS: IA?

15 THE WITNESS: IFA.

16 MR. ANDREWS: IFA?

17 THE WITNESS: Uh-huh.

18 Q. That's for the 2002 Audi A4?

19 A. Yes.

20 Q. Do you know what insurance, if any, you
21 had for the BMW?

22 A. It -- it was -- actually, to answer
23 that, I submitted in a copy of that just so
24 that I don't say something that I'm not, you
25 know, correct. There's actually a document

1 J. Guzman

2 that I submitted with -- I submitted the
3 registration and the insurance card.

4 MR. POLLACK: I'm going to make
5 a request.

6 A. Yes.

7 Q. What'd you say you submitted?

8 A. I believe it was -- I know the insurance
9 card is there, and I believe there was a
10 registration for the vehicle that I submitted
11 to my attorney, I believe it was.

12 Q. Did you pay for any repairs to the car
13 on your own?

14 A. Yes.

15 Q. Did you ever seek reimbursement for
16 those repairs?

17 A. No.

18 Q. Did you pay for the car's maintenance?

19 A. Yes.

20 Q. Did you ever seek reimbursement for the
21 maintenance?

22 A. No.

23 Q. Did you ever take any breaks during the
24 time you performed deliveries?

25 MR. ANDREWS: Objection.

1 J. Guzman

2 Q. Do you know who they're between?

3 A. Me and -- Juany and me, which, I
4 believe, is Syed.

5 Q. Was your telephone number, in January
6 2012, 646-393-6534?

7 A. Yes.

8 Q. Did you have that same phone number
9 until June 2012?

10 A. Yes.

11 Q. Looking at the entry on FD000080, do you
12 see the text next to Juany where it says, "Okay
13 how many stops bbecause I will be in a lil late
14 because I have to wait for my wife to get home
15 like at 8"?

16 A. Yes.

17 Q. Do you see that that was sent on
18 May 23rd?

19 A. Yes.

20 Q. Was this the first time you had ever
21 said that you were going to be late?

22 MR. ANDREWS: Objection.

23 A. I don't recall. I don't believe so it
24 was the only time, but I don't recall.

25 Q. Do you know what text this was in

1 J. Guzman

2 Q. Were you disciplined for showing up late
3 to work that night?

4 MR. ANDREWS: Objection.

5 A. No, I was not disciplined because I
6 always let Syed know of the situation ahead of
7 time. You know, I let him know ahead of time
8 so we could figure out, you know, how to -- to
9 figure out, you know -- to get the food to the
10 client. So I would never just not -- you know,
11 just be late just to be late. I would always
12 let him know hours and hours ahead of time
13 anytime I had any situation with anything.

14 Q. If you let him know in advance, you were
15 not disciplined?

16 MR. ANDREWS: Objection.

17 A. I was not disciplined. I don't know if
18 somebody else was disciplined. I was not
19 disciplined.

20 I had a good relationship with Syed
21 where I was always, you know, clear with him
22 that, you know -- just go and do my job, and so
23 if -- if at any time -- if I ever was late, he
24 would always know hours and hours ahead of
25 time, you know, if something was going to

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WITNESS

EXAMINATION BY

PAGE

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Juany Guzman

Yale Pollack

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DEFENDANT'S

DESCRIPTION

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61 Notice of EBT

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62 Driver's license

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63 Social Security Card

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64 Injunctive affidavit

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65 Collective affidavit

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66 Class action affidavit

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67 Handwritten calculations by

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Mr. Guzman

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Registration and insurance card for BMW

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2012 State and Federal tax return

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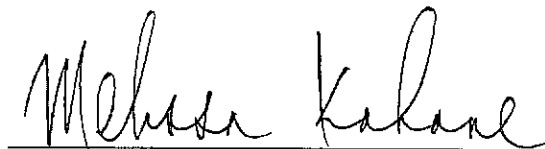
C E R T I F I C A T E

I, MELISSA KAHANE, hereby certify that the Examination Before Trial of JUANY GUZMAN was held before me on the 7th day of October, 2013; that said witness was duly sworn before the commencement of his testimony; that the testimony was taken stenographically by myself and then transcribed by myself; that the party was represented by counsel as appears herein;

That the within transcript is a true record of the Examination Before Trial of said witness;

That I am not connected by blood or marriage with any of the parties; that I am not interested directly or indirectly in the outcome of this matter; that I am not in the employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 7th day of October, 2013.



MELISSA KAHANE

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